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| 40570 7590 03/04/2008 FRIEDRICH KUEFFNER 317 MADISON AVENUE, SUITE 910 NEW YORK, NY 10017 | | | | |
| EXAMINER HERNANDEZ, MICHAEL | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/577,029

Applicant(s)

HOLLENBECK, SVEN

Examiner

MIKE HERNANDEZ

Art Unit

3612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 11-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SG/US)
Paper No(s)/Mail Date 4/24/06
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. **Claims 11 through 20 are rejected** under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 11, 13, 15 recites, "the tensioning device(s)" that suggests alternative structure. It is suggested the claim be rewritten to read, "wherein the *at least one flexible tensioning device*". Additionally, claims 16, 18, and 19 state, "the tensioning device or each tensioning device". As stated, the features are not distinctly claimed and should be rewritten as shown above.

Claim 11 states, "they act on this sealing line" (last line). 'They' is vague as to what it refers to and should be specified distinctly.

Claims 13 and 20 recite the limitation "the automobile body". There is insufficient antecedent basis for this limitation in the claim.

Claims 13 through 19 state, "wherein it the" and does not make sense as written.

Claim 17 states, "a so-called roof tip". This language is indefinite and the term 'so-called' should be deleted from the claim.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 11 through 15, 18, 19, and 20 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 3,075,804 to Geiger et al. in view of US Pat No 5,219,200 to Orth et al.

Regarding claim 11, Geiger et al. discloses a convertible vehicle with a movable roof, which has a flexible roof covering (26) at least in its rear area, wherein the rear of the roof covering is held on a tension bow (27), wherein at least one flexible tensioning device (21) is assigned to the roof covering and exerts a tensioning force on marginal regions of the roof covering when the roof is closed (Fig 1,3), wherein the tensioning devices are each assigned to a sealing line (25) of the roof covering in a lower marginal region of the roof and in a marginal region of the roof that is located in front of the tension bow with respect to the direction of vehicle travel, and in the tensioning position with the roof closed, they act on this sealing line with a force that presses downward. It should be noted that the device of Geiger et al. discloses substantially lateral force on the marginal edges, however it is shown that the body (11) curves upward in both the side and front views (Fig 2,3) and therefore would inherently have a downward force component acting on the vehicle body to achieve the end result of tensioning the marginal edge regions of the top for sealing purposes.

Geiger et al. fails to disclose the rear tensioning bow being capable of upward movement.

Orth et al. teaches a rear tensioning bow (9) that is capable of being moved upwards from a tensioned position forming a closed roof.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device described by Geiger et al. with an upwardly swinging tensioning bow, as taught by Orth et al., in order to access a rear portion of the vehicle and release tension on the roof covering.

As to claim 12, Geiger et al. discloses exactly one tensioning device is assigned to each longitudinal side of the vehicle.

As to claim 13, Geiger et al. discloses (Fig 3) the tensioning device acts on the sealing line with a force that presses against a region of the automobile body (11) that serves as a support.

As to claim 14, Geiger et al. shows (Fig 3) the support is curved convexly upward.

As to claim 15, Geiger et al. discloses (Col 3 Ln 1-5) the tensioning device lies at least partially within the sealing lines formed by elastic profiles.

As to claims 18 and 19, Geiger et al. discloses (Col 3 Ln 51) the tensioning device includes a tension spring and a traction cable.

As to claim 20, Orth et al. teaches a body mounted covering part (13) on which the rear end of the roof rests in the closed position, and which is opened to receive the roof in the automobile body.

5. **Claims 16 and 17 are rejected** under 35 U.S.C. 103(a) as being unpatentable over Geiger et al. in view of Orth et al. and further in view of US Pat No 2,482,323 to Cromwell et al.

Regarding claim 16, Geiger et al. with Orth et al. discloses a convertible vehicle as applied to claim 11, however fails to disclose the tensioning device applying force to the upper side edges of the wide windows.

Cromwell et al. teaches a tensioning device using a flexible tensioning member that applies force to the upper side edges of the side windows.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device described by Geiger et al. and Orth et al. with the tensioning devices applying force to the side windows, as taught by Cromwell et al., in order to seal the top to the side windows. The flexible tensioning member of Geiger et al. is fixed at its forward end to a location approximately even with the side window in the vehicle longitudinal direction. Simply extending the flexible tensioning member to a location forward of the side window would thereby apply a force to the side window as taught by Cromwell et al.

As to claim 17, given the teachings of Cromwell et al. it would have been obvious to attach the flexible tensioning member to any roof bow forward of the side windows to achieve the desired tensioning forces on the roof covering of the device of Geiger et al. with Cromwell et al.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Each of the supplied references disclose a convertible roof having some form of flexible device used for tensioning or desired roof movement. The Muscat reference discloses a tension bow seal along the body. The Schonhorst et al. reference should also be carefully considered as it is of very similar structure.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MIKE HERNANDEZ whose telephone number is (571)272-2354. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 571-272-6659. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit: 3612

/MIKE HERNANDEZ/
Examiner, Art Unit 3612

/Dennis H. Pedder/
Primary Examiner, Art Unit 3612